

PART V: OUT OF FAMILY INVESTIGATIONS

TABLE OF CONTENTS

A. Authorities.....	2
1.0 Definitions.....	3
2.0 <i>Additional Definitions Used in CPS Out of Family Investigations</i>	5
3.0 Minimum Standards for CPS Workers to Conduct Out of Family Investigations	5
B. Responsibilities to Conduct Out of Family Investigations	6
1.0 Determine Validity of Report or Complaint in Out of Family Settings	6
2.0 <i>Determine Track Decision</i>	6
3.0 Conduct Initial Safety Assessment.....	6
3.1 Emergency Removal of Child in Out of Family Investigations	6
C. Notify Regulatory Agency and/or Local Approval Agent of CPS Report; CPS Regional Specialist	7
1.0 Identify the Regulatory Agency	7
2.0 Facilities with No Regulatory Authority	9
3.0 Develop Joint Investigative Plan.....	9
3.1 If Regulatory Staff is Unavailable.....	9
4.0 Notify CPS Regional Specialist.....	9
D. Conduct Out of Family Investigation	10
1.0 Joint Interviews and Information Sharing	10
2.0 Joint Investigation Must Meet Requirements for Local Department and Regulatory Authority....	10
3.0 Joint Investigation with Law-Enforcement and Facility	11
4.0 Notify Facility Administrator.....	11
4.1 When the Facility Administrator or Designee is the Alleged Abuser or Neglector.....	12
5.0 Interview Alleged Victim and Notify Child's Parent.....	12
5.1 Notify Parent or Guardian of Interview with Child.....	12
5.2 CPS Worker Determines Who May Be Present During Interview with Child.....	12
6.0 Interview Alleged Abuser or Neglector	13
7.0 Interview Collateral Children and Parents or Guardians.....	13
8.0 Conduct Investigations Involving Public School Employees.....	14
8.1 Additional Requirements When a Public School Employee is the Subject of the Complaint or Report.....	16
8.2 Local Protocols for CPS Investigations involving Public School Employees	17
E. Complete Dispositional Assessment and Make Finding	18
F. Additional Notifications for out of family investigations	18
1.0 Notification to Facility Administrator and Regulatory Staff.....	18
2.0 Notification to Parent, Guardian or Custodial Agency of Victim Child	19
3.0 Document All Notifications in the Automated Data System.....	19
4.0 All Other Inquiries Referred to Facility Administrator.....	20
G. <i>Concerns for Other Children in the Care of the Alleged Abuser/Neglector</i>	20
H. Services to Abuser in an Out of Family Investigation.....	20
I. Monitor Out of Family Investigations	20

PART V: OUT OF FAMILY INVESTIGATIONS

If a CPS report does not involve a caretaker who is part of the victim child's family, that investigation is deemed an "out of family investigation." There are many types of settings and situations that are considered "out of family" settings. These settings include those regulated by other agencies such as state licensed and religiously exempted child day care centers, regulated family day homes, private and public schools, group residential facilities, hospitals, or institutions. Out of Family settings may also include settings that are not externally regulated such as camps, athletic leagues, children's clubs, babysitters who are not required to be regulated, babysitting coops, and "sleepovers" at friends' or relatives' homes. Depending on the setting, there are certain regulations and policies that apply to the conduct of these CPS investigations.

This section sets forth the requirements and guidance for responding to child abuse and neglect reports in "out of family" settings. Complaints of abuse and neglect in out of family settings differ from complaints in the child's family setting because:

1. the alleged abuser(s) in "out of family" settings may be caring for the alleged victim(s) as part of their job duties;
2. the outcome of the CPS investigation may have administrative, regulatory and/or personnel implications; and
3. CPS is mandated by *Code of Virginia* [§ 63.2-1506 \(C\)](#) to respond to certain types of these valid allegations as Investigations (not Family Assessments).

There is a checklist of all requirements to conduct a designated out of family investigation in the Appendix.

A. Authorities

In addition to Virginia Administrative Code 22VAC40-705 et. seq. that provides the regulatory authority for the general conduct of the CPS program, the Virginia Administrative Code 22VAC40-730 et. seq. provides additional requirements for CPS to conduct out of family investigations in designated settings.

22VAC40-730-20: Complaints of child abuse or neglect involving caretakers in out of family settings are for the purpose of this (*regulation*) chapter complaints in state licensed and religiously exempted child day centers, regulated family day homes, private and public schools, group residential facilities, hospitals or institutions. These complaints shall be investigated by qualified staff employed by local departments of social services or welfare.

PART V: OUT OF FAMILY INVESTIGATIONS

Staff shall be determined to be qualified based on criteria identified by the department. All staff involved in investigating a complaint must be qualified.

In addition to the authorities and the responsibilities specified in department policy for all child protective services investigations, the policy for investigations in out of family settings is set out in 22VAC40-730-30 through 22VAC 40-730-130.

All CPS authorities, procedures, and requirements applicable to in home investigations found in Part IV Family Assessment and Investigation apply to the investigation of complaints in an out of family setting. This section sets forth the additional requirements to respond to CPS reports in these settings.

1.0 Definitions

The Virginia Administrative Code 22VAC40-730-10 defines the following words and terms, when used in conjunction with this chapter, to have the following meanings, unless the context clearly indicates otherwise:

"Caretaker," for the purpose of this chapter, means any individual determined to have the responsibility of caring for a child.

"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.

"Complaint" means a valid report of suspected child abuse or neglect which must be investigated by the local department of social services

"Child day center" means a child day program operated in other than the residence of the provider or any of the children in care, responsible for the supervision, protection, and well-being of children during absence of a parent or guardian, as defined in §63.2-100 of the Code of Virginia. For the purpose of this chapter, the term shall be limited to include

PART V: OUT OF FAMILY INVESTIGATIONS

only state licensed child day centers and religiously exempted child day centers.

"Child Placing Agency" means those privately contracted agencies responsible for the training of specialized foster families and the intensive case management of the foster child.

"Department" means the Department of Social Services.

"Disposition" means the determination of whether abuse or neglect occurred.

"Facility" means the generic term used to describe the setting in out of family abuse or neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, child day centers, state regulated family day homes, and residential facilities.

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

"Family day home," for the purpose of this chapter, means a child day program as defined in [§63.2-100](#) of the Code of Virginia where the care is provided in the provider's home and is state regulated; locally approved or regulated homes are not included in this definition.

"Local agency" means the local department of social services responsible for conducting investigations of child abuse or neglect complaints as per [§ 63.2-1503](#) of the Code of Virginia.

"Physical plant" means the physical structure/premises of the facility.

"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their legal guardians, that is subject to licensure or certification pursuant to the

PART V: OUT OF FAMILY INVESTIGATIONS

provisions of the Code of Virginia and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities, and respite care facilities.

2.0 Additional Definitions Used in CPS Out of Family Investigations

The following definitions are also commonly used in the guidance and procedures to conduct out of family investigations:

“Licensed Child Placing Agency” means those privately contracted agencies responsible for the training of specialized foster families and the intensive case management of the foster child.

“Hospitals and Institutions,” for the purpose of this chapter, means the residential placement responsible for the care and treatment of a child for behavioral and/or psychological reasons. These include juvenile detention and residential treatment facilities.

“Locally Approved” means the process where a local agency has approved and prepared a family for placement of local foster children or a home for placement of daycare children.

“Religiously exempt day care center” means a child day center that is exempted from several licensing requirements and regular inspections due to its mission as a religious facility.

3.0 Minimum Standards for CPS Workers to Conduct Out of Family Investigations

22VAC40-730-130 A: In order to be determined qualified to conduct investigations in out of family settings, local CPS staff shall meet minimum education standards established by the department including:

- 1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and**
- 2. Completion of out of family policy training.**

B. The department and each local agency shall maintain a roster of personnel determined qualified to conduct these out of family investigations.

PART V: OUT OF FAMILY INVESTIGATIONS

B. Responsibilities to Conduct Out of Family Investigations

1.0 Determine Validity of Report or Complaint in Out of Family Settings

The criteria used to determine validity of an allegation in an out of family setting are the same as that in an allegation of an “in-home” setting. These criteria are discussed in Part III: Complaints and Reports.

2.0 Determine Track Decision

The Code of Virginia [§ 63.2-1506 \(C\)](#) requires CPS reports in certain out of family settings to be investigated. These settings include programs that are subject to state regulatory oversight and where the relationship between the alleged victim child and caretaker is more professional than familial. In addition, CPS reports in locally approved provider settings must be investigated.

Some CPS reports involve a caretaker who is a relative not residing in the child’s household (e.g. grandparent, aunt/uncle, etc.) or other person who has a more familial relationship with the alleged victim child. These reports may be placed in the Family Assessment Response Track if there are no other elements of the report that require an investigation.

3.0 Conduct Initial Safety Assessment

The Virginia Administrative Code provides regulatory authority to conduct the initial safety assessment in out of family investigations:

22VAC40-730-30: If the complaint information received is such that the local agency is concerned for the child's immediate safety, contact must be initiated with the facility administrator immediately to ensure the child's safety. If, in the judgment of the child protective services/CPS worker, the situation is such that the child or children should be immediately removed from the facility, the parent or parents, guardian or agency holding custody shall be notified immediately to mutually develop a plan which addresses the child's or children's immediate safety needs.

3.1 Emergency Removal of Child in Out of Family Investigations

If the CPS worker is concerned for the child’s immediate safety and the situation is such that the child should be immediately removed from the facility, the parent, guardian or agency holding custody

PART V: OUT OF FAMILY INVESTIGATIONS

and the facility administrator shall be notified immediately to mutually develop a plan providing for the child's safety. Written notification shall be provided to the facility at the time of the removal.

C. Notify Regulatory Agency and/or Local Approval Agent of CPS Report; CPS Regional Specialist

22VAC40-730-40: The authority of the local agency to investigate complaints of alleged child abuse or neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these facilities to investigate alleged violations of standards.

22VAC40-730-40(1): For complaints in state regulated facilities and religiously exempted child day centers, the local agency shall contact the regulatory authority and share the complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.

Effective July 1, 2008, the Code of Virginia has made each state agency responsible to promulgate their own standards for children's residential facilities (CRFs) and the Office of Interdepartmental Regulation will no longer be a central location for information on CRF's. For complaints in regulated facilities, the local department must contact the lead regulatory authority as quickly as possible after receipt of the complaint and before commencing the investigation.

For locally approved providers, similar notification must be given to the responsible agency.

1.0 Identify the Regulatory Agency

A. The Department of Social Services (VDSS) licenses or certifies facilities such as child day centers, including religiously exempt child day centers, licensed and voluntarily registered family day homes, and certain child care institutions and group homes. Contact information for VDSS Regional Licensing Offices is available at: <http://www.dss.virginia.gov/division/license/district.html>.

B. The Department of Juvenile Justice (DJJ) operates juvenile correctional centers and halfway houses throughout the state. For investigations involving state-operated facilities, contact the appropriate facility superintendent. Contact

PART V: OUT OF FAMILY INVESTIGATIONS

information for these facilities is available on the DJJ website at www.djj.state.va.us.

C. The Department of Juvenile Justice (DJJ) also certifies locally-operated detention homes and group homes. For investigations involving locally-operated detention homes and group homes, contact the DJJ Serious Incident Report (SIR) 24-hour hotline at 804-323-2412, or the Certification Manager at (804) 323-2359 to notify the appropriate Certification Analyst and to coordinate assistance for the investigation.

D. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) operates or licenses group homes; treatment facilities for children with substance abuse issues, developmental disabilities, and brain injuries; psychiatric hospitals that provide day or residential services to children; training centers; and state mental hospitals. Contact the DMHMRSAS Office at 804-786-1747 to reach the appropriate licensing specialist. Contact information f is also available on the DMHMRSAS website at: www.dmhmrzas.virginia.gov

E. Private day schools:

The Department of Education (DOE) regulates some private day schools. Contact Information is available at: <http://www.doe.virginia.gov/VDOE/Accountability/fpmprivatedayschooldirectory.pdf>

F. Private residential facilities:

DOE will no longer be a lead licensing agency for any children's residential facility. They will license school programs located in a residential facility separately.

If a complaint for child abuse or neglect occurs in the school program you will need to alert the regulatory agency for the facility and DOE. DOE contacts are:

Michele Hopkins (michele.hopkins@doe.virginia.gov) at 804-225-2725 or Sandra E. Ruffin (sandra.ruffin@doe.virginia.gov) at 804-225-2768.

Educational facilities are listed on the DOE web page at <http://www.doe.virginia.gov/VDOE/dbpubs/doedir/>
Click on residential schools for students with disabilities.

PART V: OUT OF FAMILY INVESTIGATIONS

2.0 Facilities with No Regulatory Authority

22VAC40-730-50(A): In a facility for which there is not a state regulatory authority, such as in schools, the CPS worker shall ask the facility administrator or school superintendent to designate a person to participate in the joint investigative process.

In an out of family investigation with no regulatory authority, the designated staff person participating in the investigation is not considered a co-investigator with the CPS worker. The CPS worker should review the investigative process and confidentiality requirements with the facility designee, whose function is to minimize duplication of investigation efforts by CPS and the facility. The CPS worker may exclude the designee from interviews as necessary.

3.0 Develop Joint Investigative Plan

22VAC40-730-40 (2): The CPS worker assigned to investigate and the appointed regulatory staff person will discuss their preliminary joint investigation plan.

The CPS worker and the appointed regulatory staff person shall confer on the preliminary investigation plan. The CPS worker and the regulatory staff person shall plan how each will be kept informed of the progress of the investigation, and must confer at the conclusion of the investigation to inform the other of their respective findings and to discuss corrective action.

3.1 If Regulatory Staff is Unavailable

If a designated regulatory staff person is not available to participate in the investigation process in a timely manner, the CPS worker should commence the investigation separately; however, efforts must be made to begin coordination and information-sharing as quickly as possible.

4.0 Notify CPS Regional Specialist

22VAC40-730-60 (B): The regional consultant shall be responsible for monitoring the investigative process and shall be kept informed of developments which substantially change the original case plan.

PART V: OUT OF FAMILY INVESTIGATIONS

22VAC40-730-60(C). At the conclusion of the investigation the local agency shall contact the department's regional CPS coordinator to review the case prior to notifying anyone of the disposition. The regional coordinator shall review the facts gathered and policy requirements for determining whether or not abuse or neglect occurred. However, the statutory authority for the disposition rests with the local agency. This review *shall* not interfere with the requirement to complete the investigation in the legislatively mandated time frame.

The CPS worker must inform the CPS regional specialist of all out of family investigations as soon as possible. The CPS worker and supervisor must consult with the regional specialist to review the investigation finding before notifying anyone of the disposition. Although the local department is responsible to make the investigation disposition, the regional specialist must review the investigation and provide technical assistance if needed to ensure the local department has conducted the investigation according to CPS regulation and guidance.

D. Conduct Out of Family Investigation

1.0 Joint Interviews and Information Sharing

22VAC40-730-40 (2)(a): The CPS worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

The local department must share the complaint information with the regulatory authority who may appoint a staff person to participate in the investigation. The CPS worker and regulatory staff person should discuss informational needs, the feasibility of joint interviews, and develop an investigative plan.

2.0 Joint Investigation Must Meet Requirements for Local Department and Regulatory Authority

22VAC40-730-40 (2)(b): The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the facility's staff, the victim child or children, and the other children at the facility.

PART V: OUT OF FAMILY INVESTIGATIONS

3.0 Joint Investigation with Law-Enforcement and Facility

22VAC40-730-50 (B): When CPS and law enforcement will be conducting a joint investigation, the CPS worker shall attempt to facilitate a coordinated approach among CPS, law enforcement and the regulatory authority or facility designee.

4.0 Notify Facility Administrator

22VAC40-730-70 (A): The CPS worker shall initiate contact with the facility administrator at the onset of the investigation.

(B). The CPS worker shall inform the facility administrator or his designee of the details of the complaint. When the administrator or designee chooses to participate in the joint investigation, he will be invited to participate in the plan for investigation, including decisions about who is to be present in the interviews. If the administrator or designee is the alleged abuser or neglecter, this contact should be initiated with the individual's superior, which may be the board of directors, etc. If there is no superior, the CPS worker may use discretion in sharing information with the administrator.

C. Arrangements are to be made for:

- 1. Necessary interviews;**
- 2. Observations including the physical plant; and**
- 3. Access to information, including review of pertinent policies and procedures.**

D. The CPS worker shall keep the facility administrator apprised of the progress of the investigation. In a joint investigation with a regulatory staff person, either party may fulfill this requirement.

The facility administrator is the on-site individual responsible for the day-to-day operation of the facility. The worker shall inform the administrator or designee of the allegations in the complaint. If there is no apparent conflict of interest in doing so, the administrator or designee should be invited to assist with the planning of the investigation. If the administrator or designee chooses not to be involved in the planning process, he shall nevertheless be informed of the progress of the investigation.

PART V: OUT OF FAMILY INVESTIGATIONS

4.1 When the Facility Administrator or Designee is the Alleged Abuser or Neglector

If the administrator or designee is the alleged abuser or neglecter, this contact should be initiated with the individual's superior, such as the chairman of the board of directors or the superintendent of schools. If there is no superior, the worker may use discretion in deciding what information to share with the administrator.

5.0 Interview Alleged Victim and Notify Child's Parent

5.1 Notify Parent or Guardian of Interview with Child

The parents, guardian or agency holding custody should be informed of their child's interview and the investigative process in advance; when this is not practical, they shall be informed as quickly as possible after the interview.

The investigative process should be explained to the child's parents, guardian or agency holding custody. The child's parents, guardian or agency holding custody should be interviewed to obtain information about the child and about their knowledge of the allegations and the facility.

The child's parents, guardian or agency holding custody should be kept informed of sufficient information to involve them in planning and support for the child.

5.2 CPS Worker Determines Who May Be Present During Interview with Child

22VAC40-730-80: Contact with the alleged victim child. The CPS worker shall interview the alleged victim child and shall determine along with a regulatory staff person or facility administrator or designee who may be present in the interview. Where there is an apparent conflict of interest, the CPS agency shall use discretion regarding who is to be included in the interview.

When the CPS worker is conducting an interview with the alleged victim child, the CPS worker shall determine who may be present during the interview, taking into consideration both the comfort of the child and other parties' need to have first-hand information. The CPS agency has the final

PART V: OUT OF FAMILY INVESTIGATIONS

authority over who may be present if there is no consensus between CPS worker, regulatory staff and/or facility administrator or designee when issues arise such as the discomfort of the interviewee or an apparent conflict of interest.

All other alleged victim interview requirements for investigations must be followed. See Part IV, Family Assessments and Investigations.

6.0 Interview Alleged Abuser or Neglector

22VAC40-730-90: Contact with the alleged abuser or neglecter.

A. The CPS worker shall interview the alleged abuser or neglecter according to a plan developed with the regulatory staff person, facility administrator, or designee. Where there is an apparent conflict of interest, the CPS agency shall use discretion regarding who is to be included in the interview. At the onset of the initial interview with the alleged abuser or neglecter, the CPS worker shall notify him in writing of the general nature of the complaint and the identity of the alleged victim child to avoid any confusion regarding the purpose of the contacts.

B. The alleged abuser or neglecter has the right to involve a representative of his choice to be present during his interviews.

The alleged abuser or neglecter must be given written notice of the CPS report, "Protecting Children Out of Home: Handout to Staff Member in Out of Family Setting Who is the Subject of A Complaint."

All alleged abuser/neglector interview requirements for investigations must be followed. See Part IV, Family Assessment and Investigation.

7.0 Interview Collateral Children and Parents or Guardians

22VAC40-730-100: Contact with collateral children. The CPS worker shall interview nonvictim children as collaterals if it is determined that they may have information which would help in determining the finding in the complaint. Such contact should be made with prior consent of the child's parent, guardian or agency holding custody. If the situation warrants contact with the child prior to such consent being obtained, the parent, guardian or agency holding custody should be informed as soon as possible after the interview takes place.

PART V: OUT OF FAMILY INVESTIGATIONS

8.0 Conduct Investigations Involving Public School Employees

The *Code of Virginia* sets out special conditions when investigating complaints of abuse and/or neglect by public school employees in their official or professional capacity.

§ 63.2-1511. A. If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§ [63.2-1503](#), [63.2-1505](#) and [63.2-1516.1](#). Pursuant to § [22.1-279.1](#), no teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control. In determining whether the actions of a teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this section, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable.

B. For purposes of this section, "corporal punishment," "abuse," or "neglect" shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in clause (i) of subsection A or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.

C. If, after an investigation of a complaint under this section, the local department determines that the actions or omissions of a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct.

PART V: OUT OF FAMILY INVESTIGATIONS

D. Each local department and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

[63.2-1516.1](#). Investigation procedures when school employee is subject of the complaint or report; release of information in joint investigations.

A. Except as provided in subsection B of this section, in cases where a child is alleged to have been abused or neglected by a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth, in the course of such employment in a nonresidential setting, the local department conducting the investigation shall comply with the following provisions in conducting its investigation:

1. The local department shall conduct a face-to-face interview with the person who is the subject of the complaint or report.
2. At the onset of the initial interview with the alleged abuser or neglecter, the local department shall notify him in writing of the general nature of the complaint and the identity of the alleged child victim regarding the purpose of the contacts.
3. The written notification shall include the information that the alleged abuser or neglecter has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.
4. Written notification of the findings shall be submitted to the alleged abuser or neglecter. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.
5. The written notification of the findings shall inform the alleged abuser or neglecter of his right to appeal.
6. The written notification of the findings shall inform the alleged abuser or neglecter of his right to review information about himself in the record with the following exceptions:

PART V: OUT OF FAMILY INVESTIGATIONS

- a. The identity of the person making the report.
- b. Information provided by any law-enforcement official.
- c. Information that may endanger the well-being of the child.
- d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

B. In all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

C. Failure to comply with investigation procedures does not preclude a finding of abuse or neglect if such a finding is warranted by the facts.

(2003, cc. 986, 1013.)

8.1 Additional Requirements When a Public School Employee is the Subject of the Complaint or Report

In addition to the four validity criteria for all CPS complaints or reports, pursuant to *Code of Virginia* [§ 63.2-1511.B](#), the local department must consider whether the school employee used reasonable and necessary force to maintain order and control. The use of reasonable and necessary force does not constitute a valid CPS report.

When the investigation is completed, the standard to make a founded disposition in addition to the preponderance of the evidence is whether such acts or omissions constituted “gross negligence” or “willful misconduct.” Otherwise, such acts should be considered within the scope of employment and taken in good faith in the course of supervision, care or discipline of students.

The Supreme Court of Virginia defines “gross negligence” as “that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of

PART V: OUT OF FAMILY INVESTIGATIONS

[another]. It must be such a degree of negligence as would shock fair minded [people] although something less than willful recklessness.”¹

The term “willful misconduct” is not commonly used, rather the most common term is “willful and wanton conduct,” which the Supreme Court of Virginia defines as follows:

In order that one may be [found to have committed] wilful [sic] or wanton conduct, it must be shown that he was conscious of his conduct, and conscious, from his knowledge of existing conditions, that injury would likely or probably result from his conduct, and that with reckless indifference to consequences he consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result.²

The term “willful misconduct” is most often used in Workers’ Compensation cases. It refers to the behavior of the injured employee and usually means that the employee violated a rule or directive of the employer and that action led to the injury.

The courts have used the term “willful misconduct” in discussing cases of gross negligence. This definition of “willful and wanton conduct” is used to define “willful misconduct” in this manual.

8.2 Local Protocols for CPS Investigations involving Public School Employees

The Virginia Code requires that each local department of social services and local school division adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services. Recommended procedures can be found in the Appendix.

¹ Ferguson v. Ferguson, 212 Va. 86, 92, 181 S.E.2d 648, 653 (1971); see also Meagher v. Johnson, 239 Va. 380, 383, 389S.E.2d 310, 311(1990).

² Infant C. v. Boy Scouts of America, 239 Va. 572, 581, 391 S.E.2d 322, (1990).

PART V: OUT OF FAMILY INVESTIGATIONS

E. Complete Dispositional Assessment and Make Finding

Refer to Part IV, Family Assessment and Investigation to complete the dispositional assessment and to make a disposition and to determine a risk level for each allegation in the complaint.

The CPS worker and supervisor must consult with CPS regional specialist prior to making a finding and notifying the alleged abuser of the disposition.

F. Additional Notifications for Out of Family Investigations

Refer to Part IV: Family Assessment and Investigation for notification requirements for all CPS investigations. There are additional notifications required in Out of Family Investigations in designated settings.

1.0 Notification to Facility Administrator and Regulatory Staff

22VAC40-730-110: Report the findings. Written notification of the findings shall be submitted to the facility administrator and the regulatory staff person involved in the investigation, if applicable, at the same time the alleged Abuser or neglector is notified.

If the facility administrator is the abuser or neglector, written notification of the findings shall be submitted to his superior if applicable.

The CPS worker shall provide a verbal notification of the disposition and a written report of the findings to the facility administrator and, if applicable, to the involved regulatory staff person, to the local approval agent and/or the Superintendent in a public school, as soon as practicable after the disposition is made.

- a. This report of the findings shall include:
 - (1) identification of the alleged abuser or neglector and victim, the type of abuse or neglect, and the disposition; and
 - (2) a summary of the investigation and an explanation of how the information gathered supports the disposition.

PART V: OUT OF FAMILY INVESTIGATIONS

2.0 Notification to Parent, Guardian or Custodial Agency of Victim Child

22VAC40-705-140(C) (2): When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglector, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

The parent or guardian of the child must be notified in writing of the disposition of the complaint involving their child. Verbal notification and explanation of the findings are also required. The worker may use discretion in determining the extent of investigative findings to be shared; however, sufficient detail must be provided for the child's custodian to know what happened to his child and to make plans for any needed support and services.

The *Code of Virginia* § [63.2-1515](#) requires that when the child has been abused in certain out of family settings the parental notification must advise the parents that the child's name will only be retained in the Central Registry if the parent or guardian grants permission within 30 days of the supervisory approval of the findings.

The notification letter to parents or guardians must include the following information:

"If you want your child's name to remain in the Central Registry for as long as the record of the investigation is retained, send a letter to the CPS Unit, Virginia Department of Social Services, 7 North 8th Street, Richmond, Virginia 23219. Include your child's name, date of birth, address, and description of the relationship of the abuser to the child."

When the parent or guardian requests the child's name to be retained, the disposition level will determine the purge date for the identifying information on the child.

3.0 Document All Notifications in the Automated Data System

Each written notification shall be documented in the automated information system, identifying all recipients, and identifying where a copy of each written notification can be found.

PART V: OUT OF FAMILY INVESTIGATIONS

4.0 All Other Inquiries Referred to Facility Administrator

The CPS worker must refer any inquiries about the findings to the facility administrator or his superior and, when applicable, to the regulatory authority.

G. Concerns for Other Children in the Care of the Alleged Abuser/Neglector

In certain out-of-family investigations, the type or extent of abuse/neglect may increase the concern for other children in the care of the alleged abuser/neglector including children in the alleged abuser/neglector's household or other workplace/out-of-family setting.

If the information gathered during the investigation gives the local department a concern for the safety of other children in the care of the alleged abuser, then the local department may wish to consult with legal counsel to determine what additional actions may be needed and permitted. These could include, but are not limited to, new referrals for investigations/assessments, voluntary family service cases, notification to other out-of-family settings, referral to the regulatory agency, and consultation with law enforcement.

H. Services to Abuser in an Out of Family Investigation

Services can be provided to an abuser or neglecter in a founded out of family investigation when the risk assessment is high or moderate for the victim child or to other children to whom the abuser may have access. Open the CPS on-going case in the name of that person in the automated data system.

I. Monitor Out of Family Investigations

22VAC40-730-120: Monitoring of cases for compliance. A sample of cases will be reviewed by department staff to ensure compliance with policies and procedures.